

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ

**MOTION TO COMPEL THE PRODUCTION OF RULE 16 DISCOVERY,
SPECIFIC DEMAND FOR *BRADY/GIGLIO/KYLES* INFORMATION AND
JENCKS ACT MATERIALS, REQUEST FOR A DISCOVERY CONFERENCE,
AND MEMORANDUM OF LAW IN SUPPORT**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, and pursuant to the Fifth Amendment to the U.S. Constitution; the Supreme Court's holdings in *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), *United States v. Agurs*, 427 U.S. 97 (1976), *United States v. Bagley*, 473 U.S. 667 (1985), *Kyles v. Whitley*, 514 U.S. 419 (1995) and their progeny; and Federal Rule of Procedure 16, respectfully moves this Court for the entry of an order requiring the government (1) to disclose and provide the following specific information and materials known, or that with the exercise of due diligence, should be known to the government, by a deadline to be established by the Court as requested herein, or (2) state for the record, either in writing or at a discovery conference, that such materials do not exist. As grounds in support, Mr. Fariz states:

I. Preliminary Statement

This motion is based on a continuing concern over the ongoing production of discovery materials in this case. In the absence of a meaningful deadline for discovery

production, the parties will not be prepared for trial, and Mr. Fariz's right to a fair trial may be jeopardized.

The Court's discovery order does not provide a final deadline to the government for the production of Rule 16 discovery. (Doc. 152). Mr. Fariz requests that the government be required to produce any Rule 16 discovery immediately, or no later than ten days from the entry of the Court's order. In asking for such a deadline, Mr. Fariz does not waive any argument he may have as to whether any forthcoming discovery has been produced too late for the defense to be prepared adequately for trial. Instead, he seeks to address the ongoing production of discovery in this request for a deadline.

On April 16, 2004, Mr. Fariz requested the immediate production of exculpatory and impeaching materials. (Doc. 511). Mr. Fariz notes that, despite that the charges in this case allege over twenty years' worth of criminal activity (Doc. 636), Mr. Fariz has still received limited amounts of exculpatory and impeaching materials. Accordingly, Mr. Fariz renews and supplements his specific request for such materials. Mr. Fariz seeks to ensure that he has been provided or will soon be provided all *Brady/Agurs/Bagley/Kyles* and *Giglio/Napue* materials. See Doc. 152, Second Amended Discovery Order, at 2-3 (ordering that *Brady/Agurs/Bagley/Kyles* and *Giglio/Napue* materials be provided to the defense "at an appropriate time, but at least thirty (30) days prior to the Defendant's trial"). Mr. Fariz previously objected to the 30-day deadline, contending that it would not allow Mr. Fariz and the other Defendants sufficient time to use such materials effectively. In seeking the

production of these materials by the deadline, Mr. Fariz does not waive any argument he has as to whether the government has delayed the production of such materials.

In accordance with the Court's discovery order requiring that parties attempt to resolve discovery matters prior to requesting Court intervention (Doc. 152 at 2, 4), Mr. Fariz supplemented his Rule 16 and *Brady/Giglio* request by written letter to the government on February 24, 2005. (Attached as Exhibit A). To date, the government has failed to respond to this letter.

In the interest of time, Mr. Fariz has added requests for information in this motion. Mr. Fariz has also included these additional requests in a letter to the government. (Attached as Exhibit C). Should the government wish to confer prior to any discovery conference, counsel for Mr. Fariz would accept that opportunity.

Finally, Mr. Fariz expressly includes within this request any information that the government deems to be classified. Members of Mr. Fariz's defense team previously submitted applications for background clearances, particularly for the purpose of working with any classified materials that are involved in this case. Should the government possess such materials that should be disclosed but have not yet been produced, Mr. Fariz requests that the Court order the government to complete the clearances that have been submitted. Counsel for Mr. Fariz understand that the government had completed or had substantially completed the background checks and merely had to complete the interviews with the applicants to finish the process.

II. Request for Rule 16 Discovery

Mr. Fariz renews his request for all Rule 16 discovery, including but not limited to:

1. **Defendant's oral, written, or recorded statements to date, pursuant to Rule 16(a)(1)(A) and (B).**

Mr. Fariz renews his request for all materials covered by Federal Rule of Criminal Procedure 16(a)(1)(A) and (B).

2. **Documents and Objects.** Mr. Fariz renews his request for all materials covered by Federal Rule of Criminal Procedure 16(a)(1)(E).

3. **Reports of Examinations or Tests.** Mr. Fariz renews his request for all materials covered by Federal Rule of Evidence 16(a)(1)(F).

4. **Expert witnesses.** The government has disclosed the names and some materials concerning almost 40 experts it may use at trial, but many of these disclosures failed to include a written summary of the intended testimony. In his letter to the government on February 24, 2005, Mr. Fariz requested, pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G), a written summary of any testimony that the government intends to use under Federal Rules of Evidence 702, 703, or 705. Mr. Fariz respectfully requests that the Court order the prompt production, within no more than ten days, of summaries that "describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications." Fed. R. Crim. P. 16(a)(1)(G); Doc. 152 at 2. In the absence of a prompt production of these materials, Mr. Fariz's ability to be prepared for trial will be substantially

prejudiced given the sheer number of potential experts and wide-ranging topics they will likely cover.

III. Request for *Brady/Giglio/Kyles* Materials

Mr. Fariz requests all favorable and exculpatory materials regarding issues of guilt or punishment, and all statements and/or promises, express or implied, made to any government witnesses in exchange for their testimony in this case, and all other information which could arguably be used for the impeachment of any government witnesses, pursuant to *Brady, Giglio*, and their progeny. While Mr. Fariz has previously requested all such material, he has received limited *Brady/Giglio* materials, and has otherwise not received a response from the government. *See Agurs*, 427 U.S. at 106 (“When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable.”).

Mr. Fariz renews his request for the prompt production of these materials prior to trial so that the information may be effectively used. *See, e.g., United States v. Bueno-Sierra*, 99 F.3d 375, 379 (11th Cir. 1996) (indicating that late disclosure of materials may be a grounds for reversal if a defendant can show prejudice, such as that it came so late that the material could not be effectively used, and noting that the court did not condone such a practice). Mr. Fariz includes within this request not only evidence that would be admissible at trial, but also information that may lead to the discovery of admissible evidence. *Wright v. Hopper*, 169 F.3d 695, 703 & n.1 (11th Cir. 1999); *Spaziano v. Singletary*, 36 F.3d 1028, 1044 (11th Cir. 1994).

In particular, Mr. Fariz makes the request for all such materials, including but not limited to:

(a) The specific requests for materials set forth in his Motion for Exculpatory and Impeaching Evidence, and legal arguments in support, which are specifically reincorporated herein by reference (Doc. 511).

(b) In light of the expansive nature of the investigation and the close involvement of law enforcement and other officials from the State of Israel and the United States in this and related cases, Mr. Fariz also includes within this request any *Brady/Giglio* materials possessed by any law enforcement or other officials involved in this case, including but not limited to materials possessed by:

(1) Israeli government and law enforcement officials (including but not limited to any requests that the government must make through the mutual legal assistance treaty to obtain these materials);¹

¹ The mutual legal assistance treaty between the United States and Israel indicates that “[t]he provisions of this Treaty shall not give rise to any right, that does not otherwise exist, on the part of any private person to obtain, suppress, or exclude any evidence.” Treaty between the Government of the United States of America and the Government of the State of Israel on Mutual Assistance in Criminal Matters, Jan. 26, 1998, art. I ¶ 4 (Attached as Exhibit B) (hereinafter MLAT). Mr. Fariz asserts, however, that if the United States government is pursuing a prosecution based in part on documents and other information received from Israel, then the United States government is duty-bound to ensure that it has also requested materials governed by *Brady*, *Giglio* and their progeny to ensure that Mr. Fariz’s due process and fair trial rights are protected. *See Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995). As such, this request, by the government, would also be based on a right that “otherwise exist[s].” MLAT, art. I, ¶ 4.

(2) other federal, state, or local officials involved in this case and related cases (e.g., the so-called Chicago cases and investigations, *United States v. Fawaz Damra* (N.D. Ohio)²); and

(3) other federal agencies (including all of their components and their predecessors and successors), including but not limited to the Central Intelligence Agency, National Security Agency, Department of Homeland Security, INS/BICE/ICE, the Department of Transportation, Transportation Security Administration, Federal Aviation Administration, National Transportation Safety Board, INTERPOL, Department of Defense, Defense Intelligence Agency, U.S. Department of Justice, Federal Bureau of Investigation, U.S. Department of the Treasury, OFAC, U.S. Department of State, U.S. Secret Service, and the U.S. Postal Service.

See Kyles v. Whitley, 514 U.S. 419, 437 (1995) (“[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case”); *McMillian v. Johnson*, 88 F.3d 1554, 1567-69 (11th Cir. 1996), *amended in nonrelevant part by*, 101 F.3d 1363 (11th Cir. 1996); *United States v. Wood*, 57 F.3d 733, 737 (9th Cir.1995); *United States v. Brooks*, 966 F.2d 1500, 1502-05 (D.C. Cir. 1992).

(c) Any agreement, whether oral, written, or understood, and any correspondence that reflects an understanding or agreement, between the United States and Israel, that limits, or

² Mr. Damra is alleged to be unindicted co-conspirator number one in the instant prosecution.

seeks to limit, the use of any evidence produced by Israel in this prosecution. *See* Fed. R. Crim. P. 16(a)(1)(E)(i).

(d) Any recommendation, opinion, findings, or information made or obtained by federal prosecutors, government personnel, or law enforcement authorities investigating the case that the prosecution of Mr. Fariz or of his co-defendants, or any of the allegations against Mr. Fariz or his co-defendants, was disputed, questionable, or unwarranted.

(e) Any information in which the government believes that a prospective witness has made untruthful or deceptive statements to law enforcement authorities, a grand jury, or in a court of law, or before any other governmental body; any information where the government has impeached the testimony of any prospective witness; any information where the government has taken the position in court that a prospective witness was deceptive or untruthful; and any information that a prospective witness has testified inconsistently to the anticipated testimony in the instant case. *See, e.g., Mesarosh v. United States*, 352 U.S. 1 (1956); *United States v. Espinosa-Hernandez*, 918 F.2d 911, 913-14 (11th Cir. 1990).

(f) The defense requests any evidence that any prospective government witness has engaged in any criminal act that (1) was not prosecuted, (2) resulted in conviction, or (3) is currently pending or under investigation by federal, state or local authorities, or is otherwise being investigated, including, for example, by immigration authorities. *See, e.g., Espinosa-Hernandez*, 918 F.2d at 914; *United States v. Croucher*, 532 F.2d 1042, 1044-46 (5th Cir. 1976); *see also* Fed. R. Evid. 608(b), 609; Doc. 152 at 2-3 (“The Government shall supply

the Defendant with a record of prior convictions of any witness who will testify for the Government at trial.”).

(g) The defense requests any evidence that any prospective government witness is biased or prejudiced against him, or has a motive to falsify or distort his or her testimony.

(h) The defense requests the names of any witness who made an arguably favorable or exculpatory statement concerning him, and the contents of such statements. *See, e.g., Hudson v. Blackburn*, 601 F.2d 785, 789 (5th Cir. 1979); *Jackson v. Wainwright*, 390 F.2d 288, 298 (5th Cir. 1968); *see also Jones v. Jago*, 575 F.2d 1164, 1168 (6th Cir. 1978).

(i) The defense requests that the government examine the personnel files and any other files within its custody, care or control, or which could be obtained by the government, for all testifying witnesses, including testifying officers and agents who may have been controlling or contacting the confidential informants in this case. Mr. Fariz requests that these files be reviewed by the government attorney for evidence or perjurious conduct or other like dishonesty, or any other material relevant to impeachment, or any information that is exculpatory. *See, e.g., Espinosa-Hernandez*, 918 F.2d at 914; *United States v. Deutsch*, 475 F.2d 55, 57-58 (5th Cir. 1973), *overruled on other grounds, United States v. Henry*, 749 F.2d 203 (5th Cir. 1984); *United States v. Garrett*, 542 F.2d 23, 25-27 (6th Cir. 1976).

(j) Any information, whether or not memorialized in a written memorandum or report, concerning favorable treatment or other inducements (including, but not limited to, the possibility of foregoing prosecution, lesser charges, reduced sentencing, assistance with immigration/deportation matters (with foreign or domestic authorities), and immunity) or

other compensation given to, or promised to, any government witness (or any family member, friend, associate) in exchange for his or her assistance to foreign, federal, or state authorities in this or any other case. This should include the date, exact nature, and identity of the person or entity providing such compensation. *See, e.g., United States v. Bagley*, 473 U.S. 667, 683-84 (1985); *United States v. Arnold*, 117 F.3d 1308, 1315-18 (11th Cir. 1997); *United States v. Williams*, 954 F.2d 668, 671-72 (11th Cir. 1992); *Haber v. Wainwright*, 756 F.2d 1520, 1523-24 (11th Cir. 1985); Doc. 152 at 3 (“The Government shall make available any application to the court for immunity of a witness as well as any order issued in response to the application.”); *see also United States v. Partin*, 493 F.2d 750, 757-60 (5th Cir. 1974); *Eleventh Circuit Pattern Jury Instructions (Criminal Cases)*, Special Instruction 1.1, 2003 (“For example, a paid informer, or a witness who has been promised that he or she will not be charged or prosecuted, or a witness who hopes to gain more favorable treatment in his or her own case, may have a reason to make a false statement because the witness wants to strike a good bargain with the Government.”).

(k) All financial and immunity and other arrangements with any potential government witness including but not limited to domestic and foreign agents, investigators, confidential informants, cooperating witnesses, and all other fact witnesses, translators, and transcriptionists, and expert witnesses. *See, e.g., Williams*, 954 F.2d at 671-72.

(l) Any “threats” made to witnesses in order to induce their testimony. *See, e.g., United States v. Scheer*, 168 F.3d 445, 449-58 (11th Cir. 1999); *see also United States v. Doherty*, 233 F.3d 1275, 1280-84 (11th Cir. 2000).

(m) The defense requests any evidence, including any medical or psychiatric reports or evaluations, tending to show that any prospective witness' ability to perceive, remember, communicate, or tell the truth is impaired; and any evidence that a witness has ever used narcotics or other controlled substances, has ever been an alcoholic, or has any other dependency; any information or records reflecting impairments of sight, hearing, memory, language, or any other physical or psychological disability; and any information and records that any prospective government witness may have suffered from any mental or emotional disease, disorder, or defect during the time period alleged in the indictment. *See, e.g., United States v. Lindstrom*, 698 F.2d 1154, 1159-68 (11th Cir. 1983); *Partin*, 493 F.2d at 762-63; *United States v. Fowler*, 465 F.2d 664, 665-66 (D.C. Cir. 1972); *see also Eleventh Circuit Pattern Instructions (Criminal)*, Special Instruction 1.3; Basic Instruction 5 (2003).

(n) Any statement, information, or document provided by a prospective government witness that conflicts in whole or in part with (1) the statement of another prospective witness, (2) a prior statement made by the same government witness with regard to the subject matter of the expected trial testimony or witness, and (3) any other document or witness. *See, e.g., Leka v. Portuondo*, 257 F.3d 89, 98-107 (2d Cir. 2001); *Jacobs v. Singletary*, 952 F.2d 1282, 1285, 1287-89 (11th Cir. 1992); *Schneider v. Estelle*, 552 F.2d 593, 594-96 (5th Cir. 1977).

(o) Mr. Fariz requests information concerning any misidentification of him, his co-defendants, or co-conspirators in the government's (1) summaries or tech cuts (or any other similar log, by any name), or (2) transcripts, including the name of the translator or other

source of misidentification, the number of such occurrences, and identification of such occurrences. Mr. Fariz has reason to believe, based on information that the government has already disclosed to the Court and the parties (not limited to the misidentification of Abd Al Aziz Awda) that speakers and individuals alleged to be involved in communications have been misidentified. Mr. Fariz requests this information for its exculpatory and impeaching purposes.

(p) Mr. Fariz requests information concerning (1) prior translations of materials produced by translators for the government that are substantially inconsistent with the government's translations that were relied upon in bringing the original or superseding indictment, and (2) any prior translations that are substantially inconsistent with the government's current transcripts that will be relied upon at trial. Mr. Fariz includes within this request substantial differences between tech cuts/summaries and subsequent verbatim transcripts, and between different verbatim transcripts, whether or not presented to the grand jury or made part of the original or superseding indictment. Mr. Fariz seeks information concerning the names of such translators involved. These materials are both potentially exculpatory and impeachment materials.³

³ With respect to inconsistencies within the government's translations, the Magistrate Judge has previously indicated:

And so in particular with regards to a request to determine whether or not the government has altered, for instance, translations that were presented to the jury – the grand jury that say one thing but now you think don't say that, I – I think that raises a Brady issue. I think the government has to take a close look at it. And . . . where you've got a specific request like that, I think you've got an additional responsibility.

(q) While Mr. Fariz previously requested information that “relate[s] in any way to the lawful transfer of funds to or from [Hatem] Naji Fariz during the relevant periods of the instant investigation and prosecution,” (Doc. 511 at 8), Mr. Fariz expressly asserts that this information should include any information concerning charitable giving on the part of Mr. Fariz and/or his alleged co-conspirators. The government apparently does not dispute that one or more defendants have provided money to charities or for charitable purposes. Mr. Fariz requests information concerning such fund-raising and money transfers.

(r) All reports, memoranda, presentation materials, and other written or oral conclusions in which the author, including but not limited to prospective government expert witnesses, has contradicted or changed his/her opinions concerning the Palestinian Islamic Jihad (“PIJ”), HAMAS, and Hezbollah with respect to nature of their activities, attacks attributed to them, illegal activities, and their membership.

(s) All information that the attacks charged as overt acts in the Superseding Indictment were not committed by, or on behalf of, the Palestinian Islamic Jihad; and all information that the perpetrators (principals or aiders and abettors) were not affiliated with the PIJ.

(t) The name and current whereabouts of any witness to the underlying events of this case whom the government does not anticipate calling as a witness at trial and a copy

(Doc. 456 at 107-08). Mr. Fariz reasserts his request for these materials.

of any statement made by or summary of an interview with such witness. *See, e.g., United States v. Severdija*, 790 F.2d 1556, 1557-61 (11th Cir. 1986); *Jones*, 575 F.2d at 1166-69.

IV. Request for Information Regarding Informants and Cooperating Witnesses.

Mr. Fariz reasserts the request that the government provide all relevant information concerning any informants or cooperating witnesses involved in this case. Mr. Fariz requests that the government disclose the identification, location, and communications of, and any agreements or promises with, any informants or cooperating witnesses. *See Roviato v. United States*, 353 U.S. 53 (1957). The Second Amended Discovery Order requires that “[t]he Government shall advise the Defendant whether a confidential informant was used in this case within twenty (20) days of the date of this Order.” (Doc. 152 at 4).

The defense has learned of the use of confidential informants through the disclosure of certain materials, including the search warrant affidavits and, much more recently, in the tech cuts from the Chicago FISAs.⁴ In the Chicago tech cuts, certain entries were made concerning individuals described as “assets,” including one asset who is described as an asset “with extensive access.”

Mr. Fariz requests the following information concerning the use of informants, including all *Brady/Giglio/Kyles* and Jencks Acts materials. *See United States v. Brumel-Alvarez*, 991 F.2d 1452, 1457-65 (9th Cir. 1993); *United States v. Osorio*, 929 F.2d 753, 760-

⁴ The government produced these tech cuts from the Chicago FISAs to the defense on March 9, 2005.

61 (1st Cir. 1991). Mr. Fariz specifically includes within this request the information requested in Part III, *supra*, and further includes:

(a) The name and address of each cooperating witness.

(b) The case names and numbers of the prosecutions in which the cooperating witness has previously been utilized as a cooperating witness.

(c) The case names and numbers of any trials or evidentiary hearings at which the cooperating witness has testified concerning his own prior criminal activity, payments or rewards provided to him by the government, efforts made to induce others to participate in criminal activity, or other purported law enforcement-related matters.

(d) Any ledger, sheet, or other document which details the sums paid the cooperating witness or his family in this and other cases in which the informant assisted the government, and the purpose of each such payment.

(e) Any report, document, or information which details the criminal activities of the cooperating witness which were undertaken by him without the authority or approval of the government, but for which the government has elected, formally or informally, not to prosecute.

(f) FBI rap sheet, NCIC printout, and other records available to the government reflecting the arrest, conviction, and investigative history of the cooperating witness.

(g) Information concerning prior misconduct by the cooperating witness in the performance of his role as an informant including, but not limited to, any prior refusal of the informant to testify for or assist the government, and any prior allegation that the informant

entrapped another person to commit an offense or made false statements in connection with a criminal investigation.

(h) Any information concerning alleged misconduct by the cooperating witness other than in his role as a cooperating witness, including misconduct that reflects a lack of candor, truthfulness or law-abiding character of the informant, such as uncharged criminal conduct or fraud.

(i) Any records or information maintained by law enforcement agencies relating to cooperating witnesses utilized in this case, including records concerning:

- (1) Use of a code name;
- (2) Use of an assumed/false identity;
- (3) Reasons for cooperation;
- (4) Whether given a polygraph exam. If so, the results of such an exam

and any information that the witness refused or failed to submit to such an exam.

- (5) Contracts executed with any law enforcement agency;
- (6) Any release forms executed by the witness;
- (7) Requirements that he protect his false identity;
- (8) Consent to recording any conversation with any party; and
- (9) Contingency fee agreements.

(j) Presentence Investigative Reports (“PSR”). While a PSR possessed by the court or the probation office is not usually producible in response to a discovery motion, *see, e.g., United States v. Trevino*, 556 F.2d 1265, 1270-71 & n.7 (5th Cir. 1977), courts have

recognized that such a report is producible if it is in the hands of the prosecutor and if, upon *in camera* review, the trial court determines that it contains exculpatory or impeachment material. *See, e.g., United States v. Jackson*, 978 F.2d 903, 909 (5th Cir. 1992); *United States v. Moore*, 949 F.2d 68, 72 (2d Cir. 1991); *United States v. DeVore*, 839 F.2d 1330, 1332-33 (8th Cir. 1988); *United States v. Anderson*, 724 F.2d 596, 598 (7th Cir. 1984); *see also United States v. Strifler*, 851 F.2d 1197, 1201-02 (9th Cir. 1988).

V. Request for Information Concerning Co-Conspirator Statements.

To the extent not already provided, Mr. Fariz requests the names of all unindicted co-conspirators whose statements will be offered against Mr. Fariz or another Defendant pursuant to Federal Rule of Evidence 801(d)(2)(E), (Doc. 152, Second Amended Discovery Order, at 3), and the identification of which conversations the government will seek to introduce under Rule 801(d)(2)(E).

Evidence relating to the credibility of such statements should also be produced. Mr. Fariz therefore requests all *Brady/Giglio/Kyles* materials relating to co-conspirators' statements, including but not limited to: (1) the true identity of the declarant; (2) any information regarding whether the declarant, or Mr. Fariz, were not members of the conspiracy at the time of the alleged statement; (3) any information that negates or calls into question that the statement was made in furtherance of the conspiracy; and (4) any information that otherwise reduces or calls into question the reliability of the statement, including but not limited to any retractions of previous statements. *See United States v.*

Christopher, 923 F.2d 1545, 1550-52 (11th Cir. 1991); *see also United States v. Kubiak*, 704 F.2d 1545, 1549-51 (11th Cir. 1983).

VI. Request for Jencks Act Materials

Mr. Fariz requests all material to which he is entitled pursuant to the Jencks Act, 18 U.S.C. § 3500, and Federal Rule of Criminal Procedure 26.2. The defense understands that the Court established a schedule for the production of these materials at the October 15, 2004 hearing.

In light of the close involvement of Israeli law enforcement and government officials in the instant prosecution, Mr. Fariz includes within his request any such materials for prospective foreign witnesses. Mr. Fariz therefore requests that the government obtain such materials for all prospective foreign witnesses, including but not limited to any requests that must be made through the mutual legal assistance treaty. *See note 1 supra*.

Additionally, Mr. Fariz requests the production of memoranda, presentation materials, and other oral or written conclusions, including but not limited to those generated by Matthew Levitt, a prospective expert witness for the government, while employed by the FBI regarding the Palestinian Islamic Jihad and/or this prosecution. *See United States v. Baptista-Rodriguez*, 17 F.3d 1354, 1366-68 & n.15 (11th Cir. 1994).

VII. Request for Materials Derived from National Security Letters.

Mr. Fariz requests any national security letters (“NSLs”), all records produced in response to such NSLs, any evidence derivative of the national security letters, and notice as to whether any evidence in this case was derived from a national security letter. *See Doe*

v. Ashcroft, 334 F. Supp. 2d 471 (S.D.N.Y. 2004).⁵ Mr. Fariz requests such information so that he may reasonably determine whether, for example, he may assert a violation of his constitutional rights. *See id.* Mr. Fariz has reason to believe that some of his records may have been sought or acquired from the use of NSLs.

VIII. Request for Materials Derived from a Mail Cover.

Mr. Fariz requests any information regarding mail covers that has not already been provided. (Doc. 152 at 3).

IX. Request for 404(b) materials.

Mr. Fariz requests notice of any materials that the government will seek to introduce under Federal Rule of Evidence 404(b). (Doc. 152 at 3).

⁵ The government's appeal of this decision is pending.

WHEREFORE, Defendant Hatem Naji Fariz respectfully requests that the Court order the government (1) to produce all discovery due to him pursuant to the Fifth Amendment, *Brady/Giglio* and their progeny, and Federal Rule of Criminal Procedure 16, or (2) state for the record that such materials do not exist.

Respectfully submitted,

R. FLETCHER PEACOCK
FEDERAL PUBLIC DEFENDER

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Florida Bar No. 0800031
Assistant Federal Public Defender
400 North Tampa Street, Suite 2700
Tampa, Florida 33602
Telephone: 813-228-2715
Facsimile: 813-228-2562
Attorney for Defendant Fariz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ M. Allison Guagliardo
M. Allison Guagliardo
Assistant Federal Public Defender